

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (MVA) No. 531 of 2000.

Judgement reserved on: 23.10.2006

Decided on : November 6, 2006.

National Insurance Co. Ltd.

.... Appellant.

Verus

Smt. Meera Devi & ors.

.... Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ashwani K. Sharma, Advocate.

For the Respondents : Mr. Raman Sethi, Advocate, for respondent No. 7.

Mr. Ramakant Sharma, Advocate, for respondent No. 8.

None for other respondents.

Surjit Singh, Judge.

This appeal by the insurer is directed against the award of the Motor Accident Claims Tribunal, whereby compensation awarded for the death of a man, named Sher Singh alias Shera, in a vehicular accident, in a petition filed by his dependents, has been ordered to be paid by the appellant.

2. Facts relevant for the disposal of the appeal may be noticed. Respondents No. 1 to 6, hereinafter called claimants, filed a petition, under Section 166 of the Motor Vehicles Act, seeking award of compensation for the death of Sher Singh alias Shera in an accident of

Whether the reporters of the local papers may be allowed to see the Judgment?

motor cycle No. HP-12-5333, owned and driven by respondent No. 7, hereinafter called insured. It was alleged that the deceased was driving a scooter, owned by Smt. Rani Sood, respondent No. 8 herein, when motor cycle No. HP-12-5333, owned and driven by respondent No. 7 Kapil Dev Sharma hit that scooter, as a result of which Sher Singh alias Shera died on the spot. It was alleged that the motor cycle was driven in a rash or negligent manner. The present appellant was impleaded as one of the respondents in the claim petition on the allegation that the motor cycle was insured with it for third party risk.

3. Respondent Kapil Dev Sharma/ insured denied that the accident had taken place on account of the alleged rash or negligent driving of the motor cycle by him. On the contrary, he pleaded that it was scooterist Sher Singh alias Shera, who was rash or negligent and that in fact the scooter, which came from the opposite direction at a very fast speed turned towards his motor cycle all of a sudden and rammed into it.

4. Appellant- insurance company took the plea that there was collusion between the claimants and the insured/ respondent Kapil Dev Sharma and that as a matter of fact, the accident took place because of the rash or negligent driving of both the vehicles, i.e. motor cycle by respondent-insured Kapil Dev Sharma and scooter by deceased Sher Singh alias Shera.

5. The Tribunal after holding inquiry, returned the finding that accident took place due to contributory negligence of Sher Singh deceased and respondent/ insured Kapil Dev Sharma and that the claimants were entitled to a sum of Rs. 2,88,000/- on account of

compensation. It was also held that the motor cycle being insured with the appellant, it (appellant) was liable to pay the entire amount of compensation.

6. The award of the Tribunal has been challenged by the appellant on the ground that there was breach of condition of policy because Sher Singh, who was driving the scooter did not possess a valid and effective driving licence and hence the liability for payment of compensation and interest etc. could not have been fastened upon it. It is also alleged that when respondent Kapil Dev Sharma- insured was held to have been a joint tort- feasor alongwith the deceased Shera, the liability for payment of entire amount of compensation awarded for the death of Sher Singh alias Shera could not have been fastened upon it.

7. I have heard the learned counsel for the parties and gone through the record. In the present case, liability has been fastened upon the appellant, because of its having an agreement of insurance with insured Kapil Dev Sharma to indemnify him for the liability which he may incur on account of injury to or death of a third party on account of the use of the motor cycle, in question. The appellant can avoid liability only if it succeeds in establishing any of the defences available to it, under Section 149(2) of the Motor Vehicles Act. Breach of condition of policy as to the persons entitled to drive the vehicle is one of the defences available to the insurer under sub-section (2) of Section 149 of the Motor Vehicles Act. In the present case, the insurer has taken the plea that Sher Singh alias Shera deceased, who was driving the scooter, did not hold a driving licence. Non-holding of driving licence by Sher Singh alias Shera, has no relevance to the determination of the

liability of the insurer-appellant. The appellant can escape its liability only if it proves the breach of condition of the policy by the insured, i.e. respondent Kapil Dev Sharma. It is not the case of the appellant that Kapil Dev Sharma did not have the licence to drive the motor cycle or that he committed the breach of any other condition of the policy. Therefore, the contention that there is breach of condition of the policy on account of the deceased Sher Singh alias Shera not holding driving licence and hence the appellant is not liable to pay the compensation, holds no water.

8. As regards the second contention raised by the Insurance Company, viz. the amount of compensation was required to be reduced to 50% on account of the finding that the petitioner was guilty of contributory negligence, the same requires rejection for two reasons. First there is nothing on the record suggesting that the quantum of compensation awarded by the Tribunal has been assessed without regard to the fact that the deceased was guilty of contributory negligence. Secondly by now it is well settled that an insurer can challenge an award in appeal only on those grounds, which it can raise by way of a defence, under Section 149 (2) of the Motor Vehicles Act and under the aforesaid provision of Motor Vehicle Act, the insurer is not permitted to raise defence about the quantum of compensation.

9. For the foregoing reasons, the appeal is dismissed.

November 6, 2006.
(Hem)

(Surjit Singh)
Judge.